IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 267 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODBHAI RATILAL PITHWA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 267 of 2002

MS MEGHA JANI for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/09/2003

ORAL JUDGEMENT

This is a revision application filed by the present petitioner under section 397 read with section

401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') challenging the judgment and order dated 15.6.2002 recorded by the learned Addl.Sessions Judge, Panchmahals in Godhra in Criminal Appeal No.3/90 dismissing the said appeal of the present petitioner and confirming the judgment and conviction order dated 25.1.1990 recorded by the Chief Judicial Magistrate, Godhra convicting the petitioner for offence punishable under section 420 read with section 114 of IPC and sentencing him to suffer R.I. for three years and directing him to pay fine of Rupees five hundred. In default of payment of fine, the petitioner was further directed to undergo further S.I. for one month.

2. The case against the petitioner was that the Gujarat State Warehousing Corporation (for short, 'the said Corporation') had its centre at Godhra and the petitioner was working as Supervisor of the said Corporation. Some construction work was going on and since the Dy. Engineer was not available, charge of the Deputy Engineer was entrusted to the petitioner who was working as Supervisor at Godhra. It appears that in some construction work, the measurements of the materials used and recorded in the measurement books were not correctly recorded and therefore, on inspection visit it was found that the measurements were incorrectly recorded. Accordingly FIR was filed, investigation was undertaken, the petitioner along with other persons were charge sheeted, trial was undertaken and at the end of the trial the learned Chief Judicial Magistrate found the petitioner guilty for offence punishable under section 420 read with section 114 of IPC and after hearing the petitioner on the quantum of punishment awarded, the aforesaid punishment to the petitioner. The petitioner preferred Criminal Appeal No.3/90 before the Sessions Court at Panchmahals at Godhra unsuccessfully. Hence this revision.

3. It has been mainly contended here that the material on record was insufficient to convict the petitioner, even for offence under section 420 and 114 of IPC. That therefore, the conviction recorded against the petitioner is illegal. In the alternative, it has been contended that looking to the alleged loss caused and suffered by the aforesaid Corporation punishment of three years' R.I. with fine is too harsh and is not in accordance with the gravity of charge levelled and proved against the petitioner and, therefore, it is required to be reduced. On receipt of the revision, rule was issued. In response to the service of notice of rule, Mr S S Patel, learned APP has appeared for the State. I have

heard the learned Advocates for the parties and have perused the papers. It appears from the record that when the matter came up for hearing at admission stage, the learned Judge of this Court had an occasion to observe that there was hardly any possibility to interfere with the conviction in view of the fact that this court is exercising revisional jurisdiction under section 397 of the Code. This Court had also observed at that time in order dated 20.8.2002 that report of the Probation Officer may also be called for and it may be taken into account.

4. Today when the matter was taken up for hearing, learned Advocate for the petitioner, initially argued the matter at length but subsequently submitted that if some leniency is shown to the petitioner, she would not press for hearing of this revision on merit.

5. It is a fact that the offence was committed long back. The petitioner was incharge of the work which was not directly and regularly under him. It appears that some mistake has been committed by the petitioner in mentioning incorrect measurements of the materials used in a particular construction. The loss said to have been caused to the Corporation is shown to be Rs.1390/-. This can be gathered from the FIR itself. The petitioner is in jail since about June, 2002. Therefore, he is in jail since last about 15 months. Having regard to the facts and circumstances of the case and looking to the quantum of the amount of loss suffered by the Corporation and considering the fact that the petitioner has been facing trial for a long time and keeping in mind the decision of the Hon'ble the Supreme Court in the case of Vishnu Datta Mishra v. State of Madhya Pradesh, reported in AIR 1979 SC 825, I am of the view that this is a fit case for showing leniency.

6. In view of the aforesaid facts and circumstances of the case, it would be appropriate to direct that the punishment already undergone may be treated to be sufficient. However, the order of payment of fine and order of imprisonment in default of payment of fine should not be disturbed.

7. For the foregoing reasons, this revision application is partly allowed. The substantive jail sentence imposed on the petitioner is reduced to the period already undergone. However, the order of payment of fine and also the order requiring the petitioner to suffer imprisonment in default of payment of fine will stand as it is. Rule is made absolute to the aforesaid

extent. D.S. permitted.

[D P Buch, J.]

msp